IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10387 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SIDHPUR NAGARPALIKA

Versus

HARSHVADAN JAYANTILAL BHATT

Appearance:

MR PK JANI for Petitioner No. 1

MR DS VASAVADA for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 24/12/2001

ORAL JUDGEMENT

Rule. The learned counsel Mr.D.S.Vasavda appearing for the respondent waives service of Rule.

2. The award of the Labour Court, Kalol in Reference (LCK) No.253 of 1991 whereby the respondent is awarded

reinstatement with full backwages is under challenge in this petition under Articles 226 and 227 of the Constitution.

3. It is obvious from bare reading of the impugned award that it is made ex-parte and the petitioner has not taken any care to participate in the proceedings before the Labour Court or to produce any evidence. Thereafter also, the petitioner has failed to make an application before the same Court for setting aside the ex-parte award. Thus, the award dated 29th May, 1999 is sought to be challenged straightway in this Court in November, 2001. By that time, the respondent - workman has already filed a petition being Spl.C.A. No.2363 of 2001 making the grievance that the award has not been implemented and despite his complaint to the Assistant Commission of Labour, the officers concerned of the employer were not prosecuted.

4. The learned counsel for the petitioner fairly conceded that the petitioner could have and ought to have made an application for setting aside the ex-parte award and if there was any delay, appropriate application for condonation of delay also could have been filed in the Labour Court. It was submitted that the petitioner would now adopt that course of action, but in the meantime, the impugned award cannot be implemented and is required to be set aside.

5. The learned counsel Mr.Vasavda appearing for the respondent - workman strongly objected and submitted that the respondent was subjected to great injustice in so far as even after illegal termination in 1991 and subsequent employment of other employees on the post held by the respondent, the respondent was not getting any relief. Therefore, without conceding to restoration of the proceedings before the Labour Court he insisted that exemplary cost must be awarded to the respondent to face the litigation afresh.

6. The petitioner in this petition being an institution of local self-government with changing office-bearers, it appears that the case before the Labour Court was not properly attended and even the advocate appointed to represent the petitioner appears to have done precious little in discharging his duty. It is not stated and known what steps the petitioner has taken against the advocate who failed to represent and defend the petitioner in the Labour Court and why it took about eight years to make even an ex-parte order. However, the petitioner, a public body, should not suffer for the

negligence, lethargy or even possible connivance of the persons in-charge of the case at the relevant time. Therefore, in the interests of justice and to give to the petitioner a fair hearing and a chance to defend its own case, it would be proper to allow the petitioner to approach the same Court for a decision on merits.

7. In these facts and circumstances, the petition is partly allowed with the direction that the petitioner shall make an appropriate application for setting aside the ex-parte award alongwith an application for condonation of delay and till the same is decided, the operation of the impugned award shall remain stayed. In case the applications directed to be filed by the petitioner fail, the impugned award shall obviously come into operation and shall be required to be implemented subject to the petitioner's right of appeal. In view of the delay and expenses suffered by the respondent, the petitioner is also directed to pay to the respondent Rs.10,000/= by way of exemplary cost within a period of one month. It is expected that the petitioner shall file the aforesaid applications as expeditiously as practicable before 30th January, 2002 and thereafter, the Labour Court shall decide the same preferably within two months. The respondent shall have liberty to take all the available defences in the applications to be filed by the petitioner in the Labour Court and the Labour Court shall decide the same on merits.

Rule is made absolute accordingly with no order as to costs.

(D.H.Waghela, J)

'Bhavesh'